

News Release



FOR IMMEDIATE RELEASE

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BC's highest court upholds CVRD decision to refuse permit in riparian area

DUNCAN, BC – On January 18, 2023, the BC Court of Appeal released its judgement for CVRD v. Wilson, upholding a CVRD decision to refuse a development permit with variances for an over height dwelling in the riparian area of Cowichan Lake.

In 2019, the property owner applied for a development permit to construct a dwelling on their lakefront property in the Honeymoon Bay community of Electoral Area F -Cowichan Lake South/Skutz Falls. The application also sought variances for the dwelling, which exceeded the zoning bylaw height limit and was to be located within the streamside protection enhancement area (SPEA).

In its decision to refuse the development permit with variances, the CVRD relied on an Official Community Plan policy, which prohibited development in the SPEA, and were not satisfied with the Qualified Environmental Professional report provided with the application.

The applicant successfully appealed the CVRD's decision through the BC Supreme Court, and the CVRD was ordered to issue the development permit with variances. On appeal, the BC Court of Appeal found that while the OCP policy to prohibit any development in a SPEA was unreasonable, it was not unreasonable for the CVRD to refuse the development permit due to the flawed QEP report, and set aside the Supreme Court order requiring the CVRD to issue the development permit.

"The CVRD is pleased with the ruling of the BC Court of Appeal, as it reinforces the importance of local governments in considering and enforcing Riparian Areas Protection and Streamside Protection Enhancement when considering development applications," said Ian Morrison, Director of Electoral Area F – Cowichan Lake South/Skutz Falls. "While the appellant judge did find the CVRD's former OCP policy to be overly restrictive, we were already well into the process of modernizing our land use policies and regulations in the form of a single OCP for Electoral Areas. This process has involved significant community engagement and we are confident the new policies reflect our community values and will continue to discourage development that disrespects important riparian areas such as those found on shores of Cowichan Lake."

The CVRD welcomes community input to the modernization of its Official Community Plan and Local Area Plans. For more information, visit www.planyourcowichan.ca.

The BC Court of Appeal Judgement for CVRD v. Wilson, 2023 BCCA 25, is available on the BC Courts website at www.bccourts.ca.

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